

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
Bankruptcy Judge  
Sacramento, California

**April 25, 2023 at 2:00 p.m.**

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1. <a href="#"><u>22-21905</u></a> -E-13 <a href="#"><u>AVN</u></a> -2	SCOTT WILLIAMS/YANCEY CUYUGAN Anh Nguyen	CONTINUED MOTION TO CONFIRM PLAN 2-9-23 <a href="#"><u>[31]</u></a>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 9, 2023. By the court’s calculation, 40 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Confirm the Plan is <span style="color:red">XXXXX</span>.</b>
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The debtors, Scott Brian Williams and Yancey Bataclan Cuyugan (“Debtors”) seek confirmation of the First Amended Chapter 13 Plan. The Plan provides monthly payments of \$372 for a period of 4 months and then \$979 for a period of 56 months. *Id.* Debtor has removed his voluntary retirement

contribution and updated his income to include his VA disability income. *Id.* Priority claims shall be paid in full through the Plan. Plan, Dckt. 29. Unsecured claims shall receive approximately 31% dividend. Plan, Dckt. 29. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

## CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on March 7, 2023. Dckt. 42. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in Plan payments.
- B. It is unclear why Debtor’s tax withholding have increased and what Debtor’s actual income is.

## DISCUSSION

### Delinquency

The Chapter 13 Trustee asserts that Debtor is \$428.00 delinquent in plan payments, which represents less than one month of the \$979.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). It is not clear what Debtor’s current income is.

	Debtor 1, Original Schedule I, Dckt. 1	Debtor 1, Amended Schedule I, Dckt. 30	Debtor 2, Original Schedule I, Dckt. 1	Debtor 2, Amended Schedule I, Dckt. 30
Gross Income	\$5,193.07	\$5,896.76	\$3,711.84	\$3,506.12
Tax, Medicare, and Social Security Deductions	<b>(\$824.83)</b>	<b>(\$1,188.68)</b>	(\$672.18)	(\$672.18)
Mandatory Contributions for Retirement	(\$579.26)	(\$654.92)	(\$371.18)	(\$371.18)
Voluntary Contribution for Retirement	(\$623.18)	\$0.00	\$0.00	\$0.00

It is unclear to the court why tax, medicare, and social security deductions have increased by \$363.85. A failure to explain the increase suggests a lack of best effort in the proposed Plan. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Trustee reported that the Debtor is now current on the Plan.

The Parties agreed to continue the hearing to allow Debtor to address the issues in connection with this Motion.

#### **APRIL 12, 2023 STATUS REPORT**

David Cusick, the Chapter 13 Trustee, filed a Status Report on April 12, 2023. Dckt. 48. Trustee reports:

1. Debtor has provided Trustee with updated pay advices which appear to be a close representation of the amended schedules.
2. Co-debtor's income may be potentially underreported by \$200.00 and tax withholdings overreported by \$75.00.
3. Co-debtor's Schedule I states debtor's retirement withholdings are "mandatory," whereas the pay advices states they are 401k retirement withholds, thus making them "voluntary."

#### **APRIL 25, 2023 HEARING**

At the hearing, -----.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Scott Brian Williams and Yancey Bataclan Cuyugan ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Confirm the Chapter 13 Plan is  
xxxxxxx.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)©.**

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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and, Debtor's Attorney on February 15, 2023. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

<b>The Objection to Confirmation of Plan is <span style="color: red;">XXXXX</span>.</b>
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The Chapter 13 Trustee, David Cusick ("Trustee") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor failed to appear at the meeting of creditors.

## DISCUSSION

Trustee's objections are well-taken.

### Failure to Appear

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned

by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Pursuant to Trustee's March 16, 2023 docket entry, Debtor appeared at the March 16, 2023 Meeting of Creditors.

As this was Trustee's only objection, it appears the Plan can now be confirmed.

At the hearing, the Trustee reported that there are several issues to address, which Debtor will address in a Corrected First Amended Plan to fix what appear to be clerical errors.

#### **APRIL 25, 2023 HEARING**

At the hearing, -----.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Confirmation of Plan is **xxxx**,

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 3, 2023. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----  
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<p><b>The Motion to Extend the Automatic Stay is granted.</b></p>
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Manjit Singh ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 22-21207) was dismissed on February 23, 2023, after Debtor failed to make plan payments and failed to file an amended plan. *See* Order, Bankr. E.D. Cal. No. 22-21207, Dckt. 70, February 23, 2023. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith because:

1. The case was filed in order to stop a pending foreclosure and allow the debtor to perform under a trial loan modification.
2. The Debtor is an Investment Representative for FJ De La Cruz Investments, has been employed for more than 6 months, and has a current gross monthly

income of \$5,250.01, deductions of \$970.45, and a net monthly income of \$5,479.56. Additionally, Debtor's mother will provide \$1,200.00 monthly for Debtor to put towards the plan. Declaration, Dckt. 10.

Dckt. 11.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g., In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at \*6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

*In re Elliot-Cook*, 357 B.R. at 814–15.

Debtor has sufficiently demonstrated the case was filed in good faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor has stated that the previous plan was filed due to Debtor falling behind on mortgage payments after Covid-19 “hit.” Declaration, Dckt. 13. Debtor states they have negotiated a trial loan modification, which starts April 1, 2023. *Id.*

On April 14, 2023, Debtor filed a Motion for Approval of the Trial Loan Modification. Dckt. 21.

The Motion is granted.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Extend the Automatic Stay filed by Manjit Singh (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.



**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, other parties in interest and Office of the United States Trustee on March 26, 2023. By the court's calculation, 30 days' notice was provided. 14 days' notice is required.

The Motion to Waive and Continue Case Administration was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

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**The Motion to Waive 1328 Certificate Requirement and Continue Case Administration is denied.**

Joint Debtor, Rachel Lorraine Ramos, seeks an order approving the Motion to Allow Further Administration of the case after the death of Debtor Mark Anthony Ramos. This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 1016.

Debtor filed for Chapter 13 relief on December 11, 2017. Dckt 69. Debtor's Plan was confirmed on February 20, 2018. *Id* . Debtor Mark Anthony Ramos passed away on February 9, 2023. *Id*.

Joint Debtor is the surviving spouse of the deceased party. A Suggestion of Death was filed on March 26, 2023. Dckt. 72.

Section 302(a) authorizes the commencement of a joint case by the filing of a single petition under chapter 13. 2 Collier on Bankruptcy P 302.01. The filing of a joint petition does not in and of itself create a single pool of assets out of which all creditors of the two individuals will be paid, but merely allows the two estates to be jointly administered. *Id.*

Congress provides in 11 U.S.C. § 302(b) that the court may consolidate the two separate bankruptcy estates into one. The court has not done so and consolidation has not been sought by the surviving debtor.

Here, Debtors' case has not been consolidated and will continue to be administered as two estates jointly administered.

Further, as Debtor is deceased, a representative is required in order for the continued administration of the estate. As it now sits, the deceased Debtor's bankruptcy case has no person, as the real party in interest, to prosecute that case.

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event a debtor passes away in a case "pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads (In re Eads)*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in Chapter 13 dies. *Id.*

Here, Rachel Lorraine Ramos has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the ninety-day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. 72. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties.

Federal Rule of Bankruptcy Procedure 7025 incorporates Federal Rule of Civil Procedure 25, which provides that "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion under Section 7025 may be brought in a non-adversary proceeding when it falls under the scope of Federal Rule of Bankruptcy Procedure 9014, contested matters. Here, the case is a contested matter such that the deceased debtor does not have a representative and without representative the estate of the debtor cannot be further administered.

A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16th Edition, § 7025.02, which states:

Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the**

**deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

**The motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004 . . . .**

(emphasis added); *see also Hawkins v. Eads, supra*. While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether “[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.” FED. R. BANKR. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Local Bankruptcy Rule 5009-1(b) requires the filing with the court of Form EDC3-190 Debtor’s 11 U.S.C. § 1328 Certificate. LOCAL BANKR. R. 1016-1 permits a movant, in a single motion, to request for the substitution for a representative, the authority to continue the administration of a case, and waiver of post-petition education requirement for entry of discharge. It does not allow waiver of the 11 U.S.C. § 1328 certification requirement.

Here, Joint Debtor, as the surviving spouse of the deceased party has not filed a motion to substitute, may not continue to administer the case on behalf of the deceased debtor. In order for Joint

Debtor to continue to administer the case, she must file a motion to substitute within 90 days of the Notice of Death of Debtor. FED. R. BANKR. P. 7025.

**XXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Allow Further Administration of the Case filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Allow Further Administration of the Case filed by Debtor is **XXXXXXX**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

**Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, and parties requesting special notice, on March 22, 2023. By the court’s calculation, 34 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

- A. the debtors, Daniel Matthew Ahumada and Shannon Audrey Ahumada (“Debtor”), provided a Plan that surpasses the limit of 60 months.
- B. Debtor’s Schedule J appears to be incomplete.
- C. Plan does not represent Debtor’s best efforts.

## DISCUSSION

Trustee’s objections are well-taken.

### **Plan Term is More Than 60 months**

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 164 months due to a recently filed priority claim by Eliot Reiner, in the amount of \$250,000.00, on March 13, 2023. Proof of Claim 7-1. It appears Debtor had not anticipated this proof of claim as the voluntary petition was filed on February 10, 2023. Dckt. 3. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

### **Incomplete Schedule J**

11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. During the Meeting of Creditors, Debtor indicated that there was a \$270.00 Self Storage fee that is not accounted for in the proposed plan. Dckt. 20. The Plan does not comply with 11 U.S.C. § 1325(a)(1).

### **Failure to Provide Disposable Income**

Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Debtor states the existence of 401K loans. Dckt. 1, page 40. Debtor has stated that there will be an increase in disposable income after the 401K Loan #1 ends in May 2024 and another increase after the 401K Loan #2 ends in March 2026. *Id.* However, Debtor's proposed Plan does not account for these increases in income. This indicates a lack of best efforts.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

**Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 25, 2023. By the court’s calculation, 31 days’ notice was provided. 28 days’ notice is required.

The Motion to Value Collateral and Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p><b>The Motion to Value Collateral and Secured Claim of Onemain Financial Group, LLC (“Creditor”) is \$5,454.00.</b></p>
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The Motion filed by Sergey Zhuk (“Debtor”) to value the secured claim of Onemain Financial Group, LLC (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 10. Debtor is the owner of a 2013 Nissan Rogue S Spot Utility 4D (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$5,454.00 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

## DISCUSSION

Based on Debtor's declaration, it appears the loan was incurred as a result of a refinance with Creditor. Dckt. 10. Creditor holds a non-purchase security interest in the vehicle. *Id.* Debtor has not provided, however, an exhibit of the loan documents evidencing Creditor's claim.

### **Proof of Claim Filed**

On April 20, 2023, after this Motion was filed on March 25, 2023, Creditor filed a Proof of Claim, to which the loan documents are attached. Additionally, with the filing of Proof of Claim 4-1, the court now has an "allowed secured claim" which may be valued pursuant to 11 U.S.C. § 506(a). 11 U.S.C. § 501, 502; Federal Rules of Bankruptcy Procedure 3002(a). Pursuant to 11 U.S.C. § 501, either a creditor or debtor can file such proof of claim.

The lien on the Vehicle's title secures a refinanced loan incurred on November 10, 2022, This refinance is not a purchase money loan. In looking at Proof of Claim 4-1, the Loan Agreement states that Creditor's refinance was at a "consumer reasonable" rate of "only" 32.32% interest.

Proof of Claim 4-1 states the amount of the secured claim is \$12,998.17. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$5,454.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral and Secured Claim filed by Sergey Zhuk ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Onemain Financial Group, LLC ("Creditor") secured by an asset described as 2013 Nissan Rogue S Sport Utility 4D ("Vehicle") is determined to be a secured claim in the amount of \$5,454.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$5,454.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.



**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on March 2, 2023. By the court's calculation, 54 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Confirm the Amended Plan is granted.</b></p>
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The debtors, Herman Phillip Baca and Betty Jean Baca ("Debtor") seek confirmation of the Chapter 13 Plan. The Plan provides for monthly payments of \$600 for a 36 month term. Plan, Dckt. 23. Debtor's attorney was paid \$1,500.00 as of date, and will receive an additional \$2,500.00 through the Plan. Dckt. 23 and 31. Debtor's proposed Plan identifies three class 2 claims: Kia Financial, with a \$4,967.26 and a \$6,879.91 claim, and Shasta Co Residence with a \$1,637.00 claim. Dckt. 23. Finally, Debtor's proposed Plan provides for a 0% dividend to unsecured creditors holding claims in the total of \$26,475.00. *Id.* 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on March 22, 2023. Dckt. 28. Trustee does not oppose the motion to confirm Plan; however, Trustee indicates that there are minor procedural errors:

- A. the Debtor failed to check a box under Section 1.02 of the Amended Plan as having nonstandard provisions ("NSP") adhered to the Amended Plan.

- B. Section 3.05 of Debtor's proposed Plan appears to include a scrivener's error where the amount paid to the attorney is listed as "\$150.00" instead of "\$1,500.00."
- C. Debtor failed to check the box under Section 3.05 and 3.06 indicating if Debtor's attorney will be paid under Local Bankruptcy Rule 2016-1(c) or in accordance with 11 U.S.C. § 329 and 330.

### **DEBTOR'S RESPONSE TO CHAPTER 13 TRUSTEE'S RESPONSE**

The Debtor, filed a Response to Chapter 13 Trustee's Response on April 6, 2023. Dckt. 31. Debtor has conceded to Trustee's contentions and has agreed to correct these minor procedural errors. Debtor asks the court order to confirm the Plan and clarifying the above terms.

After the correction of these procedural errors, the Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the debtor, Herman Phillip Baca and Betty Jean Baca ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on March 2, 2023, as amended:

1. The Amended Plan includes the following nonstandard provisions of § 7.01-02:
2. Debtor's attorney was paid \$1,500.00 prior to filing the case and will be paid additional fees of \$2,500.00 through the Plan, pursuant to Local Bankruptcy Rule 2016-1(c).

is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 27, 2023. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Opposition to Response to Notice of Final Cure has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Objection to Response to Notice of Final Cure is <span style="color: red;">XXXXXXXXXX</span></b>
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Debtor filed the pending Opposition, Dckt. 63, opposing Deutsche Bank National Trustee Company, as Trustee for GSAMP Trust 2005-WMC1's ("Creditor") Response to Trustee's Notice of Final Cure. Response, filed February 8, 2023. Pursuant to Federal Rules of Bankruptcy Procedure 3002.1(h), the Debtor can, by motion, request the court to determine whether the Debtor has cured the default and paid all required postpetition amounts. Federal Rules of Bankruptcy Procedure 3002.1(h); 9 Collier on Bankruptcy P 3002.1.04 (16th 2023).

Although filed as an "Opposition," the court treats the opposition as an Objection to Creditor's Response.

## DISCUSSION

Within 21 days after service of the notice of final cure payment, the holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with the Federal Bankruptcy Code 1322(b)(5). Federal Rules of Bankruptcy Procedure 3002.1(g). The statement shall itemize the required cure or post-petition amounts, if any, that the holder contends remain unpaid as of the date of the response.

### **Trustee's Notice of Final Cure**

The Chapter 13 Trustee, David P. Cusick, ("Trustee") filed a Notice of Final Cure Payment on January 30, 2023. The Notice of Final Cure indicates that Debtor has paid Creditor's arrearages in full.

### **Creditor's Response**

Creditor filed a response to notice of final cure payment on February 8, 2023. Response, filed February 8, 2023. Creditor indicated that Debtor has not cured arrears, still owing \$5,750.28.

### **Debtor's Opposition**

Debtor opposes Creditor's Response on the following grounds:

- A. Debtor has completed the Plan, paying creditor a total of 61 payments.
- B. Creditor's claim that Debtor is \$5,750.28 delinquent incorrectly reflects the payments received and is a unsubstantiated assertion.

### **Creditor's Response to Debtor's Opposition**

Creditor filed a Response on March 14, 2023. Dckt. 67. Creditor states, "[a]fter the Response to Notice of Final Cure was filed, Debtor made additional payments, Creditor has determined the account is now due for March 1, 2023. However, the Post-Petition Fee in the amount of \$900.00 remains unpaid." Further, Creditor indicates they prepared an Amended Response that was filed on March 14, 2023. Upon review of the docket, no Amended Response has been filed.

It appears that Creditor may be conceding that the \$5,750.28 has been satisfied. However, Creditor indicates that there is an additional \$900 "Post-Petition Fee." Dckt. 67. It is not clear to the court what this additional fee is for.

At the hearing, counsel for Creditor reported that there was still \$900 owed based on a 2018 Notice of Post-Petition Mortgage expenses. Debtor's counsel stated that the Debtor had made the payments and that the Objection to Notice of Cure was inaccurate and required Debtor to respond. Thus, Debtor argues that he is entitled to recover his attorney's fees.

It appears that both the Debtor and Creditor need to provide the other with documentation of the alleged defaults and payments. Creditor's counsel stated that the default, all but the \$900.00 was cured. However, nobody could tell the court when those payments were made by Debtor.

The court continues the hearing so that the attorneys can obtain documentation of their assertions, provide it to the other side, and determine what bona fide disputes actually exist(ed).

### **Debtor's Supplemental Opposition**

Debtor filed a supplemental opposition on April 11, 2023. Dckt. 74. Debtor states Creditor has failed to properly support their claim for post-petition delinquency and prays that the Opposition be granted, and the claim be deemed current as of December 1, 2022.

**April 25, 2023 Hearing**

At the hearing, XXXXXXXXXXXX

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Creditor's Response to Notice of Final Cure filed by the Chapter 13 debtor, Martha Suarez Garcia ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Response to Notice of Final Cure is XXXXXXXXXXXX

9 thru 10

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

-----

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Attorneys of record, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on April 4, 2023. Dckt.137. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

A separate Proof of Service states that the Motion and supporting pleadings were served on creditors holding allowed secured claims on April 7, 2023. Dckt. 147. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

**The Motion to Employ is granted.**

Kenneth Johnson ("Debtor") seeks to employ Connie Van and Keller Williams Realty ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Additionally, Debtor seeks approval of a 5.00% commission price of the original listing price. Pursuant to Local Bankruptcy Rule 9014-1(d)(5)(iii), these requests for relief may be joined in a single motion.

Debtor seeks the employment of Broker to perform professional services related to the sale of Debtor's real property commonly known as 1431 Oakhurst Way, Sacramento, CA 95822 ("Property"). Debtor argues that Broker's appointment and retention is necessary to sell the Property.

Connie Van, a real estate agent of Connie Van and Keller Williams Realty, testifies that she entered into a Residential Listing Agreement to represent Debtor in the listing and sale of the Subject Property, received and accepted an offer for \$235,000.00, and is currently in escrow. Dckt. 135. Connie Van testifies she and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Connie Van and Keller Williams Realty as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Residential Listing Agreement filed as Exhibit A, Dckt. 136. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

Movant has estimated that a five percent broker's commission from the original listing price of \$250,000.00 of the Property will equal approximately \$12,500.00. Upon review of Movant's Residential Listing Agreement, Movant can indicate whether their broker will be paid by a percentage of the listing price (or if purchase agreement is entered into, of the purchase price), or a certain dollar amount. Movant indicates a percentage fee will be paid, by checking the box next to percent, but does not provide the percent of the listing or purchase price. Movant also indicates they will pay their broker a dollar amount by listing \$12,500.00. It is not clear whether Movant, when executing the listing agreement, intended the broker to be paid a percentage fee or dollar amount.

Movant requests \$12,500.00 in brokers fees. This is five percent of the listing price of \$250,000.00. However, if Movant seeks to pay Broker with a percentage fee, Movant is selling the Property for \$235,000.00. Five percent commission of the \$235,000.00 sale price would be \$11,750.00, not \$12,500.00.

At the hearing, **XXXXXXXXXX**

As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than **XXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Employ filed by Kenneth Johnson (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Employ is granted, and Debtor is authorized to employ Connie Van and Keller Williams Realty as Broker for Debtor on the terms and conditions as set forth in the Residential Listing Agreement filed as Exhibit A, Dckt. 136.

**IT IS FURTHER ORDERED** that the Chapter 13 Debtor is authorized to pay a real estate broker’s commission in an amount not more than **%% / \$,,\$,\$,\$.,\$.** The **%% / \$,,\$,\$,\$.,\$** commission shall be paid to Chapter 13 Debtor’s broker, Connie Van and Keller Williams Realty.

**IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by Broker in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.



**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Attorneys of record, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on April 4, 2023. Dckt. 142. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

A separate Proof of Service states that the Motion and supporting pleadings were served on creditors holding allowed secured claims on April 7, 2023. Dckt. 148. By the court's calculation, 18 days' notice was provided. 21 days' notice is required. Fed. R. Bankr. P. 2002(a)(2) (requiring twenty-one days' notice). Although 21 days' notice is required, under the facts and circumstances of this Motion, the Court shortens the time to the 18 days given.

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

<p><b>The Motion to Sell Property is granted.</b></p>
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The Bankruptcy Code permits Kenneth Johnson, the Chapter 13 Debtor, ("Movant") to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 1431 Oakhurst Way, Sacramento California ("Property").

The proposed purchaser of the Property is Rodolfo Hernandez, and the terms of the sale are:

A. Price: \$235,000.00.

- B. Deposit: \$4,700.00 (2.00 percent of purchase price).
- C. Date Signed: April 1, 2023.
- D. Closing Date: April 14, 2023.

## **CREDITOR'S CONDITIONAL OPPOSITION**

Ajax Mortgage Loan Trust ("Creditor") holding a secured claim filed a Conditional Opposition on April 10, 2023. Dckt. 149. Creditor conditionally opposes the Motion to Sell on the basis that:

- A. Creditor holds a Note secured by a Deed of Trust against the Subject Property. Claim 3-1. The estimated payoff value of the Note is \$83,216.83 as of April 7, 2023.
- B. The Sale of the Property does not currently propose to pay the Creditor in full.
- C. Creditor does not object to the Sale Motion, provided that the Order approving the sale dictates that Creditor's secured note be paid off in full concurrently with the closing of the Sale.

Debtor's Estimated Seller's Statement, Exhibit B, Dckt. 141, lists payments of \$60,659.52 for "Payoff of First Mortgage Loan," and \$15,383.36 for "Payoff of Second Mortgage Loan." The document does not identify the Creditor's Claim specifically, but after an investigation of the docket, the first payoff appears to go towards Ajax Mortgage Loan's Claim 3-1, and the second payoff goes towards Robert and Marsha Townsend, Claim 2-2.

Creditor is correct that the \$60,659.52 payoff listed in the Estimated Seller's Statement does not account for Creditor's entire estimated payoff value of \$83,216.83.

## **DISCUSSION**

The Debtor's Motion states that "[t]hrough the sale of the real property all liens and security interests encumbering the property will be paid in full (or pursuant to the agreement of the parties) before or simultaneously with the transfer of title or possession to the buyer." Dckt. 138, ¶ 8. Therefore, it appears that Debtor does intend to fully payoff Creditor's Claim 3-1 at the time of sale, and that the underestimated \$60,659.52 payoff value listed in the Estimated Seller's Statement was a typographical error or oversight. At the hearing, **XXXXXXXXXX**

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **XXXXXXXXXXXXXXXXXX**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it will payoff creditors with secured claims and complete the Plan.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Sell Property filed by Kenneth Johnson, the Chapter 13 Debtor, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Kenneth Johnson, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Rodolfo Hernandez or nominee (“Buyer”), the Property commonly known as 1431 Oakhurst Way, Sacramento, California (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$235,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 141, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.

11. [18-22885-E-13](#)  
[LBG-401](#)

**RICHARD/LISA RAVALLI**  
**Lucas Garcia**

**CONTINUED MOTION TO MODIFY  
PLAN  
2-14-23 [\[57\]](#)**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 14, 2023. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior

to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Confirm Modified Plan is XXXXXXX .**

The debtors, Richard John Ravalli and Lisa Marie Ravalli ("Debtor") seek confirmation of the Modified Plan because Debtor's Chevy Sonic ("Vehicle") is inoperable and the cost to repair far exceeds any value it has. Declaration, Dckt. 59. Debtor intends to surrender the Vehicle and rely on ride shares to provide transportation until the end of the Plan on March 31, 2023. *Id.* Debtor further explains that as a result of rising inflation, Debtor's food budget has been affected. *Id.* Debtor has filed a supplemental Schedule J that reflects the increased food costs, and the additional expenses associated with utilizing ride shares. Dckt. 60. The Modified Plan provides for \$700 payments for 60 months, and a 0% percent dividend to unsecured claims totaling \$167,135.86. Modified Plan, Dckt. 61. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

## **CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 27, 2023. Dckt. 68. Trustee opposes confirmation of the Plan on the basis that:

- A. the debtors, Richard John Ravalli and Lisa Marie Ravalli ("Debtor"), are delinquent in Plan payments.
- B. Debtor's Plan exceeds the maximum length of 60 months.
- C. Debtor's Supplemental Schedule I and J are filed only as an Exhibit and not identified on the Court's docket as a separate document.
- D. Debtor's proposed Plan does not authorize Trustee's prior disbursements of \$15,385.84 to Santander Consumer USA ("Creditor").
- E. Debtor's Plan is not feasible.

## **DISCUSSION**

### **Delinquency**

The Chapter 13 Trustee asserts that Debtor is \$330.00 delinquent in plan payments, which represents one month of the \$360.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under

Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### **Plan Term Exceeds 60 months**

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 76 months due to Debtor's Motion (Dckt. 57 paragraph 6) states that plan will take an additional 14 months. However, in Debtor's proposed Modified Plan (Dckt. 61), Debtor states that the plan will last for 60 months, which would end on March 31, 2023. It is unclear whether Debtor is asking for an additional 14 months after the expiration of the 60 months, or if the Motion contains a typographical error in requesting an additional 14 months.

The Plan would appear to exceed the maximum sixty months allowed under 11 U.S.C. § 1322(d).

### **Insufficient Plan Payments**

Creditor alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). The proposed \$360.00 monthly payments for the balance of the plan term are insufficient to pay the Chapter 13 Trustee's fee, and administrative fees. Further, Debtor is inconsistent as to what the actual Plan payment will be. The modified Plan (Dckt. 61) indicates \$700 payments, while Debtor's Declaration (Dckt. 59) proposes a monthly payment of \$360.00 and Debtor's net income suggests \$718.51. Schedule J, Dckt. 1.

It is unclear as to which of these amounts is the correct one; thus, the Plan may not be confirmed.

### **Schedule I and J Not Filed Separately**

Although Debtor has provided a supplemental Schedule I and J as an Exhibit (Dckt. 60), Debtor has failed to file each of these documents separately on to the Court's docket. Filing a schedule I and J as an exhibit is not sufficient for it to be considered a supplement. Debtor must file the supplemental schedules separately on the Court's docket and properly notice them to parties in interest. Federal Rule of Bankruptcy Procedure 1009(a).

### **Lack of Authorization of Prior Disbursements**

Here, Debtor has proposed a plan that is lacking in compliance with the Bankruptcy Code. Debtor's proposed Modified Plan intends to reclassify the Vehicle from a Class 2 to a Class 3 for purposes of surrender. However, Debtor is on the 59<sup>th</sup> month of the Plan and Trustee has disbursed a total of \$15,385.84 to the creditor of this Vehicle, Santander Consumer USA ("Creditor"). In the proposed Modified Plan, Debtor has failed to authorize that these prior payments by the Trustee to the Creditor in the amount of \$15,385.84 are authorized. Under the proposed plan, no payments are authorized to Creditor as a Class 3 claim. Debtor must authorize the prior disbursements to Creditor, subject to 11 U.S.C. § 1326(c).

### **MARCH 21, 2023 HEARING**

At the hearing, counsel for the Debtor requested a continuance to address the issue relating to retaining or surrendering a vehicle. He also discussed how he would address the other issues moving forward. Counsel for the Chapter 13 Trustee concurred with the request for a continuance.

## **APRIL 11, 2023 STATUS REPORT**

Trustee has provided a Status Report regarding their Objection to Confirmation, Dckt. 73, stating:

- A. Debtor is now current in plan payments, however, all other concerns are still outstanding.
- B. Debtor's attorney contacted Trustee's office and indicated they were going to file an *Ex Parte* Motion to Sell and possibly have a family member of the Debtor willing to pay off the plan, however, Debtor has not taken steps to accomplish these actions.

## **APRIL 25, 2023 HEARING**

At the hearing, **XXXXXXX** .

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Richard John Ravalli and Lisa Marie Ravalli ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Confirm Modified Plan is **XXXXXXX**.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on March 22, 2023. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<b>The Objection to Confirmation of Plan is <span style="color: red;">xxxxxxx</span>.</b>
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. Overextension due to Internal Revenue Service ("IRS") tax claim.
- B. Failure to provide disposable income.
- C. Inaccurate statement of financial affairs.

## DISCUSSION

Trustee's objections are well-taken.

## Infeasible Plan

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). Trustee reports that the Internal Revenue Service (“IRS”) filed a Proof of Claim showing an estimation of \$25,929.15 in taxes owed for the tax year 2022. Trustee refers to this claim as 3-2 in their motion and declaration, however, the correct claim number appears to be Proof of Claim 11-1. The Trustee is correct that these taxes must be paid in full, in accordance with 11 U.S.C. §1325(a)(2) and §1325(a)(1). The Trustee estimates that it will take 69 months to complete the Plan with this claim. 69 months is over the allowed limit of 60 months.

Since the Trustee’s motion, the IRS has amended their claim. Proof of Claim 11-2. The Claim now shows \$10,297.00 in taxes owed for the 2022 tax year, with a total of \$19,114.22 owed as priority claims over the years 2021 and 2022. Proof of Claim 11-2.

The plan currently provides for \$19,954.56 in priority claims. There are two claims filed in priority claims: the IRS’ claim of \$19,433.15, of which \$19,114.22 is priority, and the Franchise Tax Board (“FTB”) claim of \$779.20, of which \$655.27 is priority. The \$19,114.22 IRS Priority Claim and \$655.27 FTB Priority Claim is less than the amount provided for in the Plan. Therefore, the Plan does not appear overextended.

### **Failure to Provide Disposable Income**

Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor’s projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Trustee notes that Debtor’s Schedule I shows Debtor voluntarily contributing \$602.08 in retirement funds, per month. Dckt.1, Page 42, #5c. Debtor’s Plan currently proposes an 11 percent dividend to unsecured creditors, with a proposed payment schedule of \$891.00 for 37 months, \$1,484.00 for 6 months, and \$2,069.00 for 17 months. Dckt. 3. Trustee contends that the voluntary retirement contributions, 11 percent dividend, and nonstandard payment schedule taken together demonstrate that Debtor may not be making a good faith effort to provide disposable income to fund the plan.

Voluntary contributions to retirement do not necessarily show a failure to use best efforts to provide disposable income. It is both reasonable and fiscally responsible to put money towards one’s retirement. In the instant case, a look at the Debtor’s schedule shows that they are making no mandatory contributions to retirement, only voluntary contributions. Dckt. 1, Page 42, #5b. This shows Debtor is not doubling up with their voluntary retirement contributions. Also, while the Trustee has noted that Debtor is only paying 11 percent to general unsecured creditors, 11 percent is not an insignificant amount. Additionally, the nonstandard payment schedule does not in itself show a failure to provide disposable income. With this in mind, the court takes no issue with the Debtor’s retirement contributions of \$602.08 per month.



## **Inaccurate Statement of Financial Affairs**

Trustee has noted that Debtor's Statement of Financial Affairs contains internal inconsistencies. In question #4, Debtor 1 states that they had business income of \$1,642.00 in the 2021 year. Dckt. 1, Page 47. In question #27, Debtor states they have not been involved in a business in the last four years. Dckt. 1, Page 52.

Trustee also notes that Question #4 shows Debtor 2 as having \$0.00 in income for the 2020 and 2021 years. Dckt. 1, page 47. Debtors' Schedule I shows that Debtor 2 has been employed by Kaiser Permanente for the past thirteen years. Dckt.1, Page 41.

These inconsistencies appear minor, but are troubling nonetheless. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Confirmation of the Plan is  
**XXXXXXX** .

# FINAL RULINGS

13. [22-21314-E-13](#)  
[DPC-2](#)

NADIA ZHIRY  
Peter Macaluso

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY  
DAVID P. CUSICK  
7-15-22 [\[56\]](#)

13 thru 14

**Final Ruling:** No appearance at the April 25, 2023 hearing is required.

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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on July 15, 2022. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

**The Hearing on the Objection to Confirmation of Plan is continued to 9:00 a.m. on April 26, 2023, specially set day and time, pursuant to prior order of this court, to address a conflict between proceedings in State Court and this Court for counsel.**

## February 28, 2023 Hearing

At the hearing, counsel for the Debtor brought to court a \$1,000 cashier's check, which will be delivered to the Trustee to bring the Debtor current.

He further reported that three permits have been finalized.

Counsel for the Receiver concurs with the request to continue until after the April 6, 2023 continued meeting of creditors.

## Debtor's Status Report

Debtor filed a Status Report on April 6, 2023. Dckt. 159. Debtor requests the court to take judicial notice pursuant to Federal Rule of Evidence 201(b)(2) of (1) judgment filed in Debtor's Chapter 7 Adversary Proceeding, Keena, II v. Zhiry, Case No. 22-020111 and (2) Memorandum Opinion and Decision in favor of Debtor in the same adversary. Adversary Case No. 22-020111, Dckts. 41, 43.

Debtor states the receiver has no claim against Debtor, having been discharged in the chapter 7. Debtor states they will file an amended chapter 13 plan and provide for the 100% plan.

For legal authority allowing this court to take judicial notice of the above court proceedings, Debtor cites Federal Rules of Evidence 201. When reviewing the plain language of Federal Rules of Evidence 201, a court may judicially notice a **fact** that is not subject to reasonable dispute if it:

(1) is **generally known** within the trial court's territorial jurisdiction; **or**

(2) can be **accurately and readily determined from sources whose accuracy cannot reasonably be questioned.**

Fed. R. Evid. 201(b). There is nothing within the plain language of 201 that states, as Debtor suggests, the court "may take judicial notice of and consider the records and filings in other court proceedings" without providing any exhibits or authenticating evidence.

The Federal Rules of Evidence permit courts to take judicial notice of **facts**, not documents. It is not a tool to be used for when counsel wants to shortcut the filing of documents as exhibits along with a declaration authenticating and explaining the documents.

### **Trustee's Status Report**

Trustee filed a status report on April 6, 2023. Dckt. 161. Trustee states Debtor is current in Plan payments. Additionally, Trustee states the parties continued the meeting of creditors to May 4, 2023, where Trustee expects that the matter will be concluded.

### **Debtor's Additional Status Report**

Debtor filed an additional status report on April 17, 2023. Dckt. 182. Debtor states they have assembled the required funds needed to pay the sewer and hook-up fees as required by the city. Additionally, Debtor largely repeats arguments from their April 6 Status Report.

### **Trustee's Additional Status Report**

Trustee filed an additional status report on April 18, 2023. Dckt. 184. Trustee states Debtor remains current in Plan payments, however, Trustee is not aware of any amended plan filed or objection to claim filed. Also, Trustee does not oppose the Motion to Excuse Turnover as to either parcel.

## **REVIEW OF OBJECTION**

The Chapter 13 Trustee, David Cusick ("Trustee") opposes confirmation of the Plan on the basis that:

- A. Infeasible Plan
- B. Delinquency
- C. Not Best Effort

### **Trustee's Status Report**

On August 9, 2022, Trustee filed a Status Report (Dckt. 84) indicating:

- 1. Debtor remains delinquent \$500.
- 2. Debtor appeared at the continued First Meeting of Creditors and the Meeting has been continued to October 13, 2022.
- 3. Trustee does not believe Debtor knows enough about their finances to accurately testify to matters pertaining to the real properties.
- 4. The Plan does not provide for the claim of Gerard F. Keena II, Receiver, which was filed as secured and priority.

### **Debtor's Reply**

On August 9, 2022, Debtor filed a reply (Dckt. 86) stating:

- A. Debtor's daughter, Vera Zhiry, makes the \$500 Plan payment and Debtor's other daughter, Luby Iyzoshuk, pays the mortgage payments.
- B. Debtor "intends to be current" on Plan payments.
- C. Luby is current on the mortgage payments.
- D. The Motion to Approve Contractor is pending.
- E. Debtor's Counsel has received cashier's checks and obtained releases from Richard Sanders, the Contractor. Bank of Marin is creating a blocked account as ordered by the court.
- F. Debtor has worked with the City, the general contractor, the Receiver's project manager and managing director, and discussed the scope of work necessary to abate the properties.

### **AUGUST 9, 2022 UPDATES AND SUPPLEMENTAL PLEADINGS**

On August 8, 2022, the Chapter 13 Trustee filed an updated Status Report. Dckt. 84. The Trustee reports that the Debtor has made one \$500.00 plan payment and is delinquent \$500.00. The court notes that the Plan as proposed does not adequately address the Debtor's actual "plan" to fund, promptly

make repairs to, and resolve all outstanding issues with the State Court Receiver. An amended plan will be necessary.

The Trustee also states that the First Meeting of Creditors could not be concluded because Debtor lacked knowledge of her finances as they relate to the Claire Avenue Properties. The First Meeting has been continued for Debtor to assemble the information for financing of the repairs, payment of taxes and insurance, and prosecution of a plan in this case.

On August 9, 2022, the Debtor filed her Reply to the Trustee's Objection to Confirmation, stating the following points:

- A. It is the Debtor's daughter, Vera Zhiry, who is to make the \$500.00 a month plan payment and Luby Iyzoshuk who is to make the monthly house payments.
- B. It is Debtor's intention to be current on the Plan payments as of August 15, 2022.
- C. Debtor's daughter, Luby Iyzoshuk, is the person who is the primary obligor on the two notes secured by the Claire Avenue Properties.
- D. A Motion has been filed to employ Richard Sanders, as the contractor, to do the necessary repairs. The hearing on the Motion is set for August 18, 2022, to be heard in conjunction with the hearing of the Receiver's Motion to allow him to take control of the Claire Avenue Properties.
- E. Debtor has obtained the cashier's checks for funds to be used for funding of the remedial work on the property and they are being deposited in a blocked account at the Bank of Marin.
- F. The Receiver, Receiver's Counsel, Receiver's Project Manager, Debtor's Contractor, Debtor's counsel, and the City's Building Inspector met on August 1, 2022, to discuss the scope of work to remediate the problems on the Claire Avenue Properties.
- G. The Reply includes a more detailed scope of work for remediation of the problems on the Properties.

Dckt. 86.

## **DISCUSSION**

### **Infeasible Plan**

Trustee alleges that the Plan is not feasible. 11 U.S.C. § 1325(a)(6). The plan calls for the mortgages due to JP Morgan Chase Bank to be paid as Class 4 by "Debtor's Daughter." Dckt. 29 at 4. Debtor does not name the daughter, nor provide any proof these payments have been paid by the daughter, and will be paid by the daughter.

According to the Trustee's best calculation with the available information it will take over 134 months to complete the Plan.

Trustee further alleges that Debtor's budget is unrealistic. Trustee cites Debtor's Schedule I. Upon the court's review, Debtor lists their husband as a dependent. Additionally, Debtor lists the following expenses:

Electricity, heat, natural gas.....	\$200.57
Water, sewer, garbage collection.....	\$140.00
Telephone, cell phone, Internet, satellite, and cable services.....	\$50.00
Food and housekeeping supplies.....	\$400.00
Clothing, laundry, and dry cleaning.....	\$10.00
Personal care products and services.....	\$20.00
Medical and dental expenses.....	\$25.00
Transportation. Include gas, maintenance, bus or train.....	\$100.00
Entertainment, clubs, recreation, newspapers, magazines, and books..	\$10.00
Vehicle insurance.....	\$50.00

The court agrees with Trustee. The above budget appears particularly low for two individuals.

### **Delinquency**

Debtor is \$500.00 delinquent in plan payments, which represents one month of the \$500.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### **Not Best Effort**

Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Plan, (DN 29) proposes payments of \$500.00 per month for 36 months, which includes an "Additional Provision" to §7.01 of either the "ADULT CHILDREN" purchasing the "SUBJECT PROPERTY" or Debtor selling the "SUBJECT PROPERTY" within 18 months. The plan is dated June 8, 2022. The "ADULT CHILDREN" are not identified. The "SUBJECT PROPERTY" is not identified where Debtor shows on Schedule A/B they have ownership of two different real properties: 1049 Claire Ave and 1039 Claire Ave. Dckt. 28 at 3-4. Debtor does not identify what sale price is expected, so Trustee cannot determine if sufficient proceeds would be generated from the plan to pay claims. Debtor has no requirement in the plan to attempt to list and sell the property as early as possible, so that Debtor would not default under this provision if they did nothing for 17 months, which is unreasonable. Thus, the court may not approve the Plan.

## **Trustee's Status Report**

Trustee filed a Status Report on October 18, 2022. Dckt. 123. Trustee states Debtor is current on Plan payments. However, the Motion by the State Court Receiver to Excuse Turnover, KSR-1, was continued to January 10, 2023 and the Meeting of Creditors was continued to February 2, 2023. Therefore, Trustee requests the court continue the hearing to after February 2, 2023.

## **November 11, 2022**

At the hearing, counsel for the Receiver reported that the First Meeting of Creditors has not yet been completed, and the deadline for filing objections is computed from that date being completed. Counsels for the Debtor, Receiver, and the Chapter 13 Trustee agreed to a continuance until after the continued 341 Meeting is scheduled to be completed and the extended deadline for filing objections to confirmation has expired.

Debtor also brought to the court's attention the Ex Parte Motion filed for disbursement of monies from the blocked account, and amended the Motion to include the Robla Elementary School District, for the payment of School District fees relating to the permits being obtained to do the corrective work on the Real Property of the Bankruptcy Estate. The amounts to be disbursed are \$2,404.52 for Twin Rivers School District and \$2,813.80 for the Robla Elementary School District. Counsel for the Trustee and Counsel for the Receiver concurred in the request and the Motion was granted by the court.

## **Debtor's Status Report**

Debtor filed a Status Report on January 10, 2023. Dckt. 137. Debtor informed the court that they have continued working diligently with the City. Additionally, Debtor informed the court that the City waived the fire suppression installation, many fees have been paid, and all permit requests were submitted to the City.

## **Debtor's Supplemental Status Report**

Debtor filed a Supplemental Status Report on February 7, 2023. Dckt. 143. Debtor informs the court are consistent progress and that they are waiting for the City for the lasts permits and inspections.

## **Trustee's Status Report**

Trustee filed a Status Report on February 9, 2023. Dckt. 146. Trustee states the First Meeting of Creditors has been continued to 1:00 p.m. to April 6, 2023. Trustee requests this hearing be continued to after that date.

**Final Ruling:** No appearance at the April 25, 2023 hearing is required.  
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Debtor's Atty: Peter Macaluso

Notes:

Continued from 4/11/23. The court continues the hearing for consideration of testimony as to the prosecution of the remedial work and the good faith prosecution of this case. The court requires Debtor's contractor to be at the continued hearing, as well as the Debtor and Debtor's family members who are involved in getting the remedial work accomplished. No telephonic appearances permitted for all and each person order to appear at this hearing or other future hearings.

**The Continued Status Conference is continued to 9:00 a.m. on April 26, 2023, specially set day and time, pursuant to prior order of this court, to address a conflict between proceedings in State Court and this Court for counsel.**



15 thru 16

**Final Ruling:** No appearance at the April 25, 2023 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors that have filed claims, parties requesting special notice, and Office of the United States Trustee on March 10, 2023. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

The Motion to Substitute has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion filed as Docket Entry 50 has been replaced by the same Motion filed at Docket 63. The court removes this matter from the Calendar, the Motion filed at Docket 50 having been superceded by the Motion filed at Docket 63.**

It appears to the Court that this Motion was inadvertently docketed twice. The Court will make its ruling on the Motion filed as docket 63 and its supporting documents numbers 63-66.

**Final Ruling:** No appearance at the April 25, 2023 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors that have filed claims, parties requesting special notice, and Office of the United States Trustee on March 10, 2023. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

The Motion to Substitute has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion to Substitute is granted.</b>
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Joint Debtor, Sharon Lynne Azevedo, seeks an order approving the motion to substitute Joint Debtor for the deceased Debtor, Daniel Kevin Snook. This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 1016-1.

Debtor filed for relief under Chapter 13 on August 7, 2020. On December 16, 2020, Debtor's Chapter 13 Plan was confirmed. Dckt. 29. On October 17, 2022, Debtor Daniel Kevin Snook passed away. Joint Debtor asserts that she is the lawful successor and representative of Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, Joint Debtor requests authorization to be substituted in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. A Suggestion of Death was filed on January 9, 2023. Dckt. 37. Joint Debtor is the spouse of the deceased party and is the successor's heir and lawful representative. Joint Debtor states that she will continue to prosecute this case in a timely and reasonable manner.

## DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event a debtor passes away in a case “pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.” Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads (In re Eads)*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in Chapter 13 dies. *Id.*

Federal Rule of Bankruptcy Procedure 7025 incorporates Federal Rule of Civil Procedure 25, which provides that “[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent’s successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.” *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16th Edition, § 7025.02, which states:

Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The

motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

**The motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004 . . . .**

(emphasis added); *see also Hawkins v. Eads, supra*. While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether “[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.” FED. R. BANKR. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, Sharon Lynne Azevedo has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the ninety-day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. 37. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Joint Debtor, Sharon Lynne Azevedo, as the spouse of the deceased party and as the successor’s heir and lawful representative, may continue to administer the case on behalf of the deceased debtor, Daniel Kevin Snook. The court grants the Motion to Substitute Party.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Sharon Lynne Azevedo is substituted as the successor-in-interest to Daniel Kevin Snook and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

17. [22-20157](#)-E-13  
[PGM-2](#)

NELSON MADSEN/SHARON  
BURNS  
Peter Macaluso

OBJECTION TO NOTICE OF PAYMENT  
CHANGE AND/OR MOTION FOR  
COMPENSATION FOR PETER G.  
MACALUSO, DEBTORS ATTORNEY(S)  
2-25-23 [[90](#)]

Pursuant to prior court order, Dckt. 95, the hearing on the Objection was continued to May 16, 2023 at 2:00 p.m.